



**STATE OF MISSOURI
OFFICE OF ADMINISTRATION
DIVISION OF PURCHASING AND MATERIALS MANAGEMENT (DPMM)
INVITATION FOR BID**

IFB NO. B2Z05028
TITLE: TELEPHONE CIRCUIT CARDS
ISSUE DATE: 10/20/04

REQ#: NR 527501483
BUYER: TED WILSON
PHONE NO.: (573) 751-1692
E-MAIL: ted.wilson@oa.mo.gov

RETURN BID NO LATER THAN: 11/04/04 AT 2:00 PM

MAILING INSTRUCTIONS: Print or type **IFB Number** and **Return Due Date** on the lower left hand corner of the envelope or package. Bids must be in DPMM office (301 W High St, Rm 630) by the return date and time.

RETURN BID TO: **DPMM** **or** **DPMM**
 P O BOX 809 **301 WEST HIGH ST, RM 630**
 JEFFERSON CITY MO 65102-0809 **JEFFERSON CITY MO 65101**

CONTRACT PERIOD: DATE OF AWARD THROUGH ONE YEAR

DELIVER SUPPLIES/SERVICES FOB DESTINATION TO THE FOLLOWING ADDRESS:

**SOUTHEAST MISSOURI STATE UNIVERSITY
610 WASHINGTON STREET - NORTH DOCK
CAPE GIRARDEAU, MO 63701**

The bidder hereby declares understanding, agreement and certification of compliance to provide the items and/or services, at the prices quoted, in accordance with all requirements and specifications contained herein and the Terms and Conditions Invitation for Bid (Revised 08/28/04). The bidder further agrees that the language of this IFB shall govern in the event of a conflict with his/her bid. The bidder further agrees that upon receipt of an authorized purchase order from the Division of Purchasing and Materials Management or when this IFB is countersigned by an authorized official of the State of Missouri, a binding contract shall exist between the bidder and the State of Missouri.

SIGNATURE REQUIRED

| | | | |
|--------------------------------|----------------|--|-----------------------|
| AUTHORIZED SIGNATURE | | DATE | |
| PRINTED NAME | | TITLE | |
| COMPANY NAME | | | |
| MAILING ADDRESS | | | |
| CITY, STATE, ZIP | | | |
| FEDERAL EMPLOYER ID NO. | | SOCIAL SECURITY NO. IF FEDERAL EMPLOYER ID NO. NOT APPLICABLE | |
| PHONENO. | FAX NO. | | E-MAIL ADDRESS |

NOTICE OF AWARD (STATE USE ONLY)

| | | | |
|--|-------------|-------------------|------------------------|
| ACCEPTED BY STATE OF MISSOURI AS FOLLOWS: | | | |
| CONTRACT NO. | | VENDOR NO. | CONTRACT PERIOD |
| BUYER | DATE | DIRECTOR | |

1. INTRODUCTION:

1.1 Purpose:

- 1.1.1 This document constitutes a request for sealed bids from prospective bidders to provide Avaya Analog Station Circuit Telephone Circuit Cards in accordance with the requirements and provisions stated herein for Southeast Missouri State University, located in Cape Girardeau, Missouri.

1.2 Offeror's Contacts:

- 1.2.1 Offerors and their agents (including subcontractors, employees, consultants, or anyone else acting on their behalf) must direct all of their questions or comments regarding the IFB, the evaluation, etc. to the buyer of record indicated on the first page of this IFB. Offerors and their agents may not contact any other state employee regarding any of these matters during the solicitation and evaluation process. Inappropriate contacts are grounds for suspension and/or exclusion from specific procurements. Offerors and their agents who have questions regarding this matter should contact the buyer of record, Ted Wilson..

1.3 Background:

- 1.3.1 The University currently owns an Avaya G3R Version 8 PBX switch, which supports approximately 5000 extensions. The University has a technical staff that uses a software interface to administer the switch.

2. CONTRACTUAL REQUIREMENTS

2.1 Contract Period:

- 2.1.1 The original contract period shall be as stated in the Invitation for Bid (IFB). The contract shall not bind, nor purport to bind, the state for any contractual commitment in excess of the original contract period.

2.2 Renewal Periods:

- 2.2.1 The Division of Purchasing and Materials Management shall have the right, at its sole option, to renew the contract for two (2) additional one-year periods, or any portion thereof. In the event the Division of Purchasing and Materials Management exercises such right, all terms and conditions, requirements and specifications of the contract shall remain the same and apply during the renewal period, pursuant to applicable option clauses of this document.
- 2.2.2 If the option for renewal is exercised by the Division of Purchasing and Materials Management, the contractor shall agree that the prices for the renewal period shall not exceed the maximum percent of increase for the applicable renewal period stated on the Pricing Page of the contract.
- 2.2.3 If renewal percentages are not provided, then prices during renewal periods shall be the same as during the original contract period.
- 2.2.4 The Division of Purchasing and Materials Management does not automatically exercise its option for renewal based upon the maximum percent of increase and reserves the right to offer or to request renewal of the contract at a price less than the maximum percent of increase stated.

2.3 Price:

- 2.3.1 All prices shall be firm, fixed and as indicated in Exhibit A (Pricing Page). The state shall not pay nor be liable for any other additional costs including but not limited to taxes, shipping charges, insurance, interest, penalties, termination payments, attorney fees, liquidated damages, etc. The contractor shall be paid installation costs and/or maintenance/repair costs provided that such costs are firm, fixed and specifically quoted in response to the Invitation for Bid. Failure to quote costs for installation and maintenance/repair

shall not relieve the contractor from his/her responsibility to maintain, install and/or repair all items, and any related costs for the service shall be considered by both the contractor and the state to be included within the price stated in the contract.

2.4 Liabilities:

- 2.4.1 The contractor shall agree that the State of Missouri shall not be responsible for any liability incurred by the contractor or the contractor's employees arising out of the ownership, selection, possession, leasing, rental, operation, control, use, maintenance, delivery, return, and/or installation of equipment provided by the contractor, except as otherwise provided in the contract.

2.5 Contractor Liability:

- 2.5.1 The contractor shall be responsible for any and all personal injury (including death) or property damage as a result of the contractor's negligence involving any equipment or service provided under the terms and conditions, requirements and specifications of the contract. In addition, the contractor assumes the obligation to save the State of Missouri, including its agencies, employees, and assignees, from every expense, liability, or payment arising out of such negligent act. The contractor also agrees to hold the State of Missouri, including its agencies, employees, and assignees, harmless for any negligent act or omission committed by any subcontractor or other person employed by or under the supervision of the contractor under the terms of the contract.
- 2.5.2 The contractor shall not be responsible for any injury or damage occurring as a result of any negligent act or omission committed by the State of Missouri, including its agencies, employees, and assignees.
- 2.5.3 Under no circumstances shall the contractor be liable for any of the following: (1) third party claims against the state for losses or damages (other than those listed above); (2) loss of, or damage to, the state's records or data; or (3) economic consequential damages (including lost profits or savings) or incidental damages, even if the contractor is informed of their possibility.

2.6 Termination:

- 2.6.1 The Division of Purchasing and Materials Management reserves the right to terminate the contract at any time, for the convenience of the State of Missouri, without penalty or recourse, by giving written notice to the contractor at least thirty (30) calendar days prior to the effective date of such termination. The contractor shall be entitled to receive just and equitable compensation for services and/or supplies delivered to and accepted by the State of Missouri pursuant to the contract prior to the effective date of termination.

2.7 Assignment:

- 2.7.1 The contractor shall not transfer any interest in the contract, whether by assignment or otherwise, without the prior written consent of the Division of Purchasing and Materials Management.
- 2.7.2 Consent to Assignment shall only be granted when: (A) the assignee agrees to be bound by all of the terms and conditions of this contract agreement, (B) the assignee operates the business as a continuation of such party's business, and (C) the credit worthiness of the assignee is no less than that of such party's worthiness. Any assignment of moneys shall be void and ineffective to the extent that such assignment attempts to impose upon the State of Missouri obligations to additional payment of such moneys, or to preclude the State of Missouri from dealing in all matters pertaining to the contract agreement including, but not limited to, the negotiation of amendments or the settlement of charges due.
- 2.7.3 The contractor shall agree and understand that, in the event the Division of Purchasing and Materials Management consents to a financial assignment of the contract in whole or in part to a third party, any payments made by the State of Missouri pursuant to the contract, including all of those payments assigned to the third party, shall be contingent upon the performance of the prime contractor in accordance with all terms and conditions, requirements and specifications of the contract.

2.8 Inventions, Patents, and Copyrights:

- 2.8.1 The contractor shall report to the state promptly and in reasonable written detail, each notice or claim of patent or copyright infringement based on the performance of the contract of which the contractor has knowledge.
- 2.8.2 The state agrees that the contractor has the right to defend or at its option to settle, and the contractor agrees to defend at its own expense or at its option to settle, any claim, suit or proceeding brought against the state on the issue of infringement of any United States patent or copyright by any product, or any part thereof, supplied by the contractor to the state under this agreement. The contractor agrees to pay, subject to the limitations hereinafter set forth in this paragraph, any final judgment entered against the state on such issue in any suit or proceeding defended by the contractor. The state agrees that the contractor at its sole option shall be relieved of the foregoing obligations unless the state notifies the contractor promptly in writing of any such claim, suit, or proceeding, and at the contractor's expense, gives the contractor proper and full information needed to settle and/or to defend any such claim, suit, or proceeding. If the product, or any part thereof, furnished by the contractor to the state becomes, or in the opinion of the contractor may become, the subject of any claim, suit, or proceeding for infringement of any United States patent or copyright, or in the event of any adjudication that such product or part infringes any United States patent or copyright, or if the use, lease, or sale of such product or part is enjoined, the contractor may, at its option and its expense: (1) procure for the state the right under such patent or copyright to use, lease, or sell as appropriate such product or part, or (2) replace such product or part with other product or part suitable to the state, or (3) suitably modify such product or part, or (4) discontinue the use of such product or part and refund the aggregated payments and transportation costs paid therefore by the state, less a reasonable sum for use and damage. The contractor shall have no liability for any infringement based upon: (1) the combination of such product or part with any other product or part not furnished to the state by the contractor, or (2) the modification of such product or part unless such modification was made by the contractor, or (3) the use of such product or part in manner for which it was not designed.
- 2.8.3 The contractor shall not be liable for any cost, expense, or compromise, incurred or made by the state in conjunction with any issue of infringement without the contractor's prior written authorization. The foregoing defines the entire warranty by the contractor and the exclusive remedy of the state with respect to any alleged patent infringement by such product or part.

2.9 Subcontractors:

- 2.9.1 Any subcontracts for the products/services described herein must include appropriate provisions and contractual obligations to ensure the successful fulfillment of all contractual obligations agreed to by the contractor and the State of Missouri and to ensure that the State of Missouri is indemnified, saved, and held harmless from and against any and all claims of damage, loss, and cost (including attorney fees) of any kind related to a subcontract in those matters described in the contract between the State of Missouri and the contractor. The contractor shall expressly understand and agree that he/she shall assume and be solely responsible for all legal and financial responsibilities related to the execution of a subcontract. The contractor shall agree and understand that utilization of a subcontractor to provide any of the products/services in the contract shall in no way relieve the contractor of the responsibility for providing the products/services as described and set forth herein. The contractor must obtain the approval of the State of Missouri prior to establishing any new subcontracting arrangements and before changing any subcontractors. The approval shall not be arbitrarily withheld.

2.10 Contractor Status:

- 2.10.1 The contractor represents himself or herself to be an independent contractor offering such services to the general public and shall not represent himself/herself or his/her employees to be an employee of the State of Missouri. Therefore, the contractor shall assume all legal and financial responsibility for taxes, FICA, employee fringe benefits, workers compensation, employee insurance, minimum wage requirements, overtime, etc., and agrees to indemnify, save, and hold the State of Missouri, its officers, agents, and

employees, harmless from and against, any and all loss; cost (including attorney fees); and damage of any kind related to such matters.

2.11 Insurance:

- 2.11.1 The contractor shall understand and agree that the State of Missouri cannot save and hold harmless and/or indemnify the contractor or employees against any liability incurred or arising as a result of any activity of the contractor or any activity of the contractor's employees related to the contractor's performance under the contract. Therefore, the contractor must acquire and maintain adequate liability insurance in the form(s) and amount(s) sufficient to protect the State of Missouri, its agencies, its employees, its clients, and the general public against any such loss, damage and/or expense related to his/her performance under the contract.

2.12 Property of State:

- 2.12.1 All reports, documentation, and material developed or acquired by the contractor as a direct requirement specified in the contract shall become the property of the State of Missouri. The contractor shall agree and understand that all discussions with the contractor and all information gained by the contractor as a result of the contractor's performance under the contract shall be confidential and that no reports, documentation, or material prepared as required by the contract shall be released to the public without the prior written consent of the state agency.

2.13 Estimated Quantities:

- 2.13.1 The quantities indicated in this Invitation for Bid are estimates that pertain to the total aggregate quantities that may be ordered throughout the stated contract period. The estimates do not indicate single order amounts unless otherwise stated. The State of Missouri makes no guarantees about single order quantities or total aggregate order quantities.

2.14 Replacement of Damaged Product:

- 2.14.1 The contractor shall be responsible for replacing any item received in damaged condition at no cost to the State of Missouri. This includes all shipping costs for returning non-functional items to the contractor for replacement.

2.15 Substitutions of Product/Services:

- 2.15.1 The contractor shall not substitute any item(s) that has been awarded to the contractor without the prior written approval of the Division of Purchasing and Materials Management.
- 2.15.2 The state reserves the right to allow the contractor to substitute any new product/service offered by the contractor on all unshipped and future orders if the quality is equal to or greater than the product/service under contract and if the prices are equal to or less than the contract prices. The Division of Purchasing and Materials Management shall be the final authority as to acceptability.
- 2.15.3 In event of manufacturer discontinuation, the contractor shall substitute item(s) with equal or better capabilities for equal or less cost than the discontinued item(s). The contractor shall not substitute any item(s) without the prior written approval of the Division of Purchasing and Materials Management. The Division of Purchasing and Materials Management shall be the final authority as to acceptability of requested substitutions and reserves the right to accept or reject any substitution requests.

2.16 Contract / Entire Agreement:

- 2.16.1 A binding contract shall consist of: (1) the IFB, amendments thereto, (2) the contractor's bid response, (3) clarifications of the bid, if any; and (4) the Division of Purchasing and Materials Management (DPMM)'s

acceptance of the bid by "notice of award". All Exhibits and Attachments included in the IFB shall be incorporated into the contract by reference.

- 2.16.2 The notice of award does not constitute a directive to proceed. Before providing equipment, supplies and/or services, the contractor must receive a properly authorized purchase order or notice to proceed.
- 2.16.3 The contract expresses the complete agreement of the parties and performance shall be governed solely by the specifications and requirements contained therein.
- 2.16.4 Any change, whether by modification and/or supplementation, must be accomplished by a formal contract amendment signed and approved by and between the duly authorized representative of the contractor and the Division of Purchasing and Materials Management or by a modified purchase order prior to the effective date of such modification. The contractor expressly and explicitly understands and agrees that no other method and/or no other document, including correspondence, acts, and oral communications by or from any person, including the state agency, shall be used or construed as an amendment or modification of the contract.
- 2.16.5 The contract shall be construed according to the laws of the State of Missouri. The contractor shall comply with all local, state, and federal laws and regulations related to the performance of the contract to the extent that the same may be applicable.
- 2.16.6 To the extent that a provision of the contract is contrary to the Constitution or laws of the State of Missouri or of the United States, the provisions shall be void and unenforceable. However, the balance of the contract shall remain in force between the parties unless terminated by consent of both the contractor and the DPMM.

3. PERFORMANCE REQUIREMENTS

3.1 Equipment Requirements:

- 3.1.1 The contractor shall provide Avaya TN793B, 24-port Analog Station Circuit Card to Southeast Missouri State University, on an as needed, if needed basis in accordance with the requirements and provisions stated herein.
- 3.1.2 The contractor may provide new or refurbished circuit cards, however, the contractor should provide refurbished circuit cards to the fullest extent possible.
- 3.1.3 The contractor shall understand and agree that all circuit cards provided will be installed by Southeast Missouri State University telephone technicians.
- 3.1.4 The contractor shall understand and agree that all circuit cards must be eligible for maintenance by a maintenance provider under a separate system maintenance contract.
- 3.1.5 The contractor shall provide a minimum three-year warranty on all circuit cards provided. Warranty shall commence upon delivery and acceptance by Southeast Missouri State University.
- 3.1.6 The contractor should deliver circuit cards to Southeast Missouri State University not later than 14 days after the receipt of a properly executed order.

3.2 Equipment Proposed:

4. BIDDER'S INSTRUCTIONS AND REQUIREMENTS

4.1 Preparation and Submission of Bids:

4.1.1 ELECTRONIC SUBMISSION OF BIDS THROUGH THE ON-LINE BIDDING WEB SITE IS NOT AVAILABLE FOR THIS IFB.

4.1.2 Organization: In order to provide optimal readability of their bid by evaluators, bidders are strongly encouraged to organize their response as follows:

Signed IFB and IFB Amendment Cover Pages

Table of Contents

Transmittal Letter/Executive Summary

Exhibit A - Cost (Pricing Pages)

Exhibit B - Other Requested Information

Exhibit C - Domestic Products Procurement Act (Buy American)

4.1.3 Conciseness/Completeness of Bids: It is highly desirable that the bidder responds in a complete, but concise manner. It is the bidder's sole responsibility to submit information in their response as it relates to the evaluation categories. The State of Missouri is under no obligation to solicit such information if it is not included in the bidder's response. The bidder's failure to submit such information may cause an adverse impact on the evaluation of their bid. Unnecessary information should be excluded from the bidder's response.

4.1.4 Imaging Ready: All bid responses are scanned into the Division of Purchasing and Materials Management imaging system after award of the IFB. In preparing their response, bidders should be mindful of document preparation efforts for imaging purposes and storage capacity that will be required to image the bids. Glue bound materials should not be used.

4.1.5 Open Records: The bidder's response shall be considered an open record pursuant to RSMo (Revised Statutes of the State of Missouri) Section 610.021 upon the official opening of the bids. The bidder shall not submit their response as proprietary or confidential unless the proprietary or confidential nature of the material is provided for in the above reference statute. Proprietary or confidential portions of the bidder's response allowed by the statute shall be separated, sealed and clearly marked as confidential. Also, the bidder shall provide adequate explanation of what qualifies the material as being held confidential under the provisions of the statute.

4.1.6 Compliance with Requirements, Terms and Conditions: The bidder's response shall not take exception to or conflict with the mandatory requirements of the IFB (denoted by the words "must" and "shall") including the IFB terms and conditions. The State of Missouri shall not award a noncompliant bid response.

- a. The bidder is cautioned when submitting pre-printed terms and conditions to make sure such documents do not contain other terms and conditions which conflict with those of the IFB and its contractual requirements. Such pre-printed terms and conditions should be submitted with Exhibit B. **The bidder shall be required to do one of the following if pre-printed terms and conditions are submitted: (1) The bidder must clearly state on the first page of each of their pre-printed terms and conditions documents the following, "In the event of conflict between any of the ("name of bidder's company") terms and conditions and those contained in the IFB BZ05001 the IFB shall govern" or (2) Sign B.6 of Exhibit B entitled "Addendum to the Offeror's Pre-printed Terms and Conditions Documents".** Failing to place this statement on the bidder's pre-printed terms and conditions documents or not signing paragraph B.6 of Exhibit B and/or taking exception to the State's terms and conditions may render a bidder's response non-responsive and remove it from consideration for award.

4.1.7 Business Compliance: The bidder must be in compliance with the laws regarding conducting business in the State of Missouri. The bidder certifies by signing the signature page of this original document and any amendment signature page(s) that he/she and any proposed subcontractors are presently in compliance with such laws. The bidder shall provide documentation of compliance upon request by the Division of

Purchasing and Materials Management. The compliance to conduct business in the state shall include but may not be limited to:

- Registration of business name (if applicable)
- Certificate of authority to transact business/certificate of good standing (if applicable)
- Taxes (e.g., city/county/state/federal)
- State and local certifications (e.g., professions/occupations/activities)
- Licenses and permits (e.g., city/county license, sales permits)
- Insurance (e.g., worker's compensation/unemployment compensation)

4.1.8 Foreign Bidders: Any foreign bidder not having an Employer Identification Number assigned by the United States Internal Revenue Service (IRS) must submit a completed IRS Form W-8 prior to or with the submission of their bid in order to be considered for award. If you are a foreign company and do not have an Employer Identification Number assigned by the United States Internal Revenue Service (IRS), you will need to complete the appropriate IRS W-8 form (found on the www.irs.gov website). Submit the W-8 form along with contact information (name, phone number, fax number, and e-mail address) to the Office of Administration, Division of Purchasing and Materials Management; Attention: Libby Shivers; PO Box 809; Jefferson City, MO 65101-0809 or, for courier service, 301 West High St., Rm. 630, Jefferson City, MO 65101 prior to or with the submission of your bid. Once the W-8 has been processed by the state, your company will be provided with a tax id number that may be used to register as a State of Missouri vendor through this On-Line Bidding website (<https://www.moolb.mo.gov>).

- a. If your company is a foreign company and you have an Employer Identification Number assigned by the IRS, completing an IRS W-8 form will not be necessary and you may register as a vendor with the State of Missouri through the On-Line Bidding website by using the Employer Identification Number assigned to your company by the IRS.
- b. When submitting your bid/bid, attach a note to the front page advising DPMM whether you have (1) submitted a W-8 prior to submission of the bid/bid, (2) included the completed W-8 form with your bid/bid, or (3) registered with the State of Missouri through the On-Line Bidding website using your Employer Identification Number.

4.1.9 Description of Product: The bidder should present a detailed description of the circuit cards proposed in the response to this Invitation for Bid. It is the bidder's responsibility to make sure the circuit card proposed is adequately described. The bidder may submit preprinted marketing materials with the bid. .

4.2 Bid Evaluation and Award:

4.2.1 Cost Evaluation: The evaluation shall cover the original contract period plus renewal periods. The cost evaluation shall include all mandatory requirements. However, the State of Missouri reserves the right to evaluate optional items, if deemed necessary.

4.2.2 All or None: The State of Missouri shall award the contract on an all or none basis, therefore the bidder must bid all items. However, should it be in the best interest of the state, the Division of Purchasing and Materials Management reserves the right to award by item or groups of items.

4.2.3 Unit of Measure: If the unit of measure specified on the attached pricing pages is different than the manner in which the bidder offers that item, **then the unit of measure being proposed by the bidder MUST be clearly identified in Exhibit A.**

- a. In the cost evaluation, a unit price conversion will be done in order to fairly evaluate bid prices. However, for any resulting contract, the unit of measure bid will be the unit of measure awarded. Offerors are encouraged to contact the Buyer **prior to** submission of their bid to discuss anticipated unit modifications.

- b. The bidder is cautioned that the State of Missouri reserves the right to clarify the unit of measure modification, and further to disqualify the bid for that line item if the unit of measure modification is not deemed appropriate or in the best interests of the State of Missouri.

4.3 Other Requested Information:

- 4.3.1 The bidder must respond to the information requested in Exhibit B, Other Requested Information.
- 4.3.2 The bidder must respond to the information requested in Exhibit C, Domestic Products Procurement Act (Buy American) form.

EXHIBIT A**COST (PRICING PAGE)****A.1 REQUIRED PRICING**

The bidder must state the firm, fixed prices for all items listed below. All prices stated herein must be firm, fixed throughout the contract period stated on page 1.

The quantities indicated in this Invitation for Bid are estimates only. The State of Missouri does not guarantee quantities.

| ITEM | DESCRIPTION | ESTIMATED QUANTITY | UNIT OF MEASURE | UNIT PRICE | EXTENDED PRICE |
|------|---|--------------------|-----------------|------------|----------------|
| 001 | Avaya TN793B, 24 Port Analog Station Circuit Card | 26 | EACH | \$_____ | |

A.2 RENEWAL OPTIONS FOR ALL PRICING

The Division of Purchasing and Materials Management shall have the sole option to renew the contract for two (2) additional one-year periods, or any portion thereof.

The bidder must indicate below the maximum allowable percentage of price increase or **guaranteed** minimum percentage of price decrease applicable to the renewal option periods. The stated percentage(s) shall apply to each itemized component on the applicable pricing page(s). **If a percentage is not quoted (i.e. left blank), the state shall have the right to execute the option at the same price(s) quoted for the original contract period.** Statements such as "a percentage of the then-current price" or "consumer price index" are NOT ACCEPTABLE.

All increases or decreases shall be calculated against the **ORIGINAL** contract price, NOT against the previous year's price. A CUMULATIVE CALCULATION SHALL NOT BE UTILIZED.

The percentages indicated below will be used in the cost evaluation to determine the potential maximum financial liability to the State of Missouri.

NOTICE: DO NOT COMPLETE BOTH A MAXIMUM INCREASE AND A MINIMUM DECREASE FOR THE SAME RENEWAL PERIOD.

| | <u>Maximum Increase</u> | OR | <u>Minimum Decrease</u> |
|------------------------|-------------------------|----|-------------------------|
| First Renewal Period: | original price + ____% | OR | original price - ____% |
| Second Renewal Period: | original price + ____% | OR | original price - ____% |

EXHIBIT B**OTHER REQUESTED INFORMATION****B.1 BIDDER'S CONTACT INFORMATION:**

If different from the information provided on the front page of the IFB, the bidder should provide all necessary contact information including the IFB Coordinator and Contract Coordinator if awarded a contract.

| IFB COORDINATOR CONTACT INFORMATION <i>i.e. person to be contacted for questions and other coordination activities regarding the bidder's response</i> | |
|--|--|
| NAME: | |
| JOB TITLE: | |
| PHONE: | |
| FAX #: | |
| EMAIL: | |

| CONTRACT COORDINATOR CONTACT INFORMATION <i>i.e. person to be contacted for questions and other coordination activities regarding an awarded contract</i> | |
|---|--|
| NAME: | |
| JOB TITLE: | |
| PHONE: | |
| FAX #: | |
| EMAIL: | |

B.2 PREFERENCE FOR ORGANIZATIONS FOR THE BLIND AND SHELTERED WORKSHOPS

A five (5) bonus point preference shall be granted to bids including products and/or services manufactured, produced or assembled by qualified nonprofit organizations for the blind established pursuant to 41 U.S.C. sections 46 to 48c and sheltered workshops holding a certificate of approval from the Department of Elementary and Secondary Education pursuant to section 178.920 RSMo. Five bonus points will be added to the total evaluation points for bids qualifying for the preference.

If the bidder is an organization for the blind or sheltered workshop, then the bidder must provide evidence of qualifications as described herein (i.e., copy of certificate or certificate number).

If the bidder is utilizing an organization for the blind or sheltered workshop as a subcontractor, then the bidder must submit a letter of intent signed by the organization for the blind or sheltered workshop describing the products/services they will provide and indicating their commitment to aid the contractor's performance under the prospective state contract.

B.3 PRODUCTS PROCUREMENT ACT (BUY AMERICAN)

The bidder is advised that, in accordance with RSMo 34.350 - 34.359, the attached certification form (Exhibit C), for the State of Missouri Domestic Products Procurement Act (Buy American) must be completed, signed, and returned in order to be considered for preference.

NOTE: The above certification does not apply to any proposed software.

B.4 BIDDER'S AS EMPLOYEES

Offeror's who are employees of the State of Missouri, a member of the General Assembly or a statewide elected official must comply with Sections 105.450 to 105.458 RSMo regarding conflict of interest. If the bidder and/or any of the owners of the bidder's organization are currently an employee of the State of Missouri, a member of the General Assembly or a statewide elected official, please provide the following information:

Name and title of state employee, General
Assembly member or statewide elected official: _____

Name of state agency where employed: _____

Percentage of ownership interest in bidder's
organization held by state employee, General
Assembly member or statewide elected official: _____%

B.5 ADDENDUM TO BIDDER’S PRE-PRINTED TERMS AND CONDITIONS DOCUMENTS

By signing the signature block below the bidder hereby declares understanding and agreement with the following: (1) that the language of this IFB shall govern in the event of a conflict with his/her bid, including any pre-printed terms and conditions documents that are submitted as part of his/her bid, and (2) any of the bidder’s terms and conditions contained in the submitted pre-printed terms and condition documents that conflict with the IFB B2Z05028’s terms and conditions, shall have no force or effect and are hereby considered invalid. All other terms and provisions of the bidder’s pre-printed terms and conditions documents that are not in conflict with the IFB shall apply hereto.

SIGNATURE REQUIRED

| | |
|----------------------|-------|
| | |
| AUTHORIZED SIGNATURE | DATE |
| PRINTED NAME | TITLE |

B.6 DELIVERY

The desired delivery is 14 days after the receipt of a properly executed order. If bidder's delivery is different, the bidder should state delivery in days after receipt of order:

_____ days ARO

EXHIBIT C**STATE OF MISSOURI -- OFFICE OF ADMINISTRATION
DOMESTIC PRODUCTS PROCUREMENT ACT (BUY AMERICAN)**

The Missouri Domestic Products Procurement Act (34.350-34.359 RSMo) requires that for all bids with a value of \$25,000 or more, the goods or commodities purchased by any public agency or used or supplied in the construction, alteration, repair, or maintenance of any public works must be **manufactured or produced** in the United States. As defined in 34.350 RSMo, United States means the United States of America, the District of Columbia, and all territories and possessions subject to the jurisdiction of the United States. The law also requires that the bidder must provide proof of compliance. **Note: In general, if an import tariff is applied to an item, it does not qualify for the Buy American preference. In addition, Most Favored Nation status does not allow application of the preference.**

Section A – All Products Are Manufactured or Produced In U.S.

If all products bid qualify as domestic products under Missouri law, complete only Section A.

I hereby certify that all products qualify as domestic, that the information provided is true and correct, and complies with all provisions of Sections 34.350-34.359 RSMo. I understand that any misrepresentation herein constitutes the commission of a class A misdemeanor.

SIGNATURE (If submitting bid electronically, typed signature required).

COMPANY NAME

If Section A is completed, do not complete Section B.

Section B – Only One Product Line or No Products Are Manufactured or Produced In U.S.

If only one product line or no products are manufactured or produced in the U.S. complete only section B.

I hereby certify that there is only one product line or no product manufactured or produced in the U.S., that the information provided is true and correct, and complies with all provisions of Sections 34.350-34.359 RSMo. I understand that any misrepresentation herein constitutes the commission of a class A misdemeanor.

SIGNATURE (If submitting bid electronically, typed signature required).

COMPANY NAME

Section C – Products May Qualify Because of Qualifying Treaty

If some or all products bid qualify for domestic status because of a trade treaty, etc., then the bidder must identify each product, country and qualifying treaty, etc. below. The bidder must list ALL products which are or may qualify as domestic below. If more space is needed, please copy this form and submit as an attachment.

| BID ITEM NUMBER(S) | COUNTRY WHERE MANUFACTURED OR PRODUCED | QUALIFYING TREATY, LAW, AGREEMENT, OR REGULATION |
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SECTION C

I hereby certify that the specific items listed above are domestic, that the information provided is true and correct, and complies with all provisions of Sections 34.350-34.359 RSMo. I understand that any misrepresentation herein constitutes the commission of a class A misdemeanor.

SIGNATURE (If submitting bid electronically, typed signature required)

COMPANY NAME

NOTE: Any product not listed above in Section C will be considered non-domestic if Section A is not signed. If this form is not completed, signed, and returned, items bid may not receive the domestic preference.

STATE OF MISSOURI
DIVISION OF PURCHASING AND MATERIALS MANAGEMENT
TERMS AND CONDITIONS -- INVITATION FOR BID

1. TERMINOLOGY/DEFINITIONS

Whenever the following words and expressions appear in an Invitation for Bid (IFB) document or any amendment thereto, the definition or meaning described below shall apply.

- a. **Agency and/or State Agency** means the statutory unit of state government in the State of Missouri for which the equipment, supplies, and/or services are being purchased by the **Division of Purchasing and Materials Management (DPMM)**. The agency is also responsible for payment.
- b. **Amendment** means a written, official modification to an IFB or to a contract.
- c. **Attachment** applies to all forms which are included with an IFB to incorporate any informational data or requirements related to the performance requirements and/or specifications.
- d. **Bid Opening Date and Time** and similar expressions mean the exact deadline required by the IFB for the receipt of sealed bids.
- e. **Bidder** means the person or organization that responds to an IFB by submitting a bid with prices to provide the equipment, supplies, and/or services as required in the IFB document.
- f. **Buyer** means the procurement staff member of the DPMM. The **Contact Person** as referenced herein is usually the Buyer.
- g. **Contract** means a legal and binding agreement between two or more competent parties, for a consideration for the procurement of equipment, supplies, and/or services.
- h. **Contractor** means a person or organization who is a successful bidder as a result of an IFB and who enters into a contract.
- i. **Exhibit** applies to forms which are included with an IFB for the bidder to complete and submit with the sealed bid prior to the specified opening date and time.
- j. **Invitation for Bid (IFB)** means the solicitation document issued by the DPMM to potential bidders for the purchase of equipment, supplies, and/or services as described in the document. The definition includes these Terms and Conditions as well as all Pricing Pages, Exhibits, Attachments, and Amendments thereto.
- k. **May** means that a certain feature, component, or action is permissible, but not required.
- l. **Must** means that a certain feature, component, or action is a mandatory condition. Failure to provide or comply will result in a bid being considered non-responsive.
- m. **Pricing Page(s)** applies to the form(s) on which the bidder must state the price(s) applicable for the equipment, supplies, and/or services required in the IFB. The pricing pages must be completed and submitted by the bidder with the sealed bid prior to the specified bid opening date and time.
- n. **RSMo (Revised Statutes of Missouri)** refers to the body of laws enacted by the Legislature which govern the operations of all agencies of the State of Missouri. Chapter 34 of the statutes is the primary chapter governing the operations of DPMM.
- o. **Shall** has the same meaning as the word must.
- p. **Should** means that a certain feature, component and/or action is desirable but not mandatory.

2. APPLICABLE LAWS AND REGULATIONS

- a. The contract shall be construed according to the laws of the State of Missouri. The contractor shall comply with all local, state, and federal laws and regulations related to the performance of the contract to the extent that the same may be applicable.
- b. To the extent that a provision of the contract is contrary to the Constitution or laws of the State of Missouri or of the United States, the provisions shall be void and unenforceable. However, the balance of the contract shall remain in force between the parties unless terminated by consent of both the contractor and the DPMM.
- c. The contractor must be registered and maintain good standing with the Secretary of State of the State of Missouri and other regulatory agencies, as may be required by law or regulations.
- d. The contractor must timely file and pay all Missouri sales, withholding, corporate and any other required Missouri tax returns and taxes, including interest and additions to tax.
- e. The exclusive venue for any legal proceeding relating to or arising out of the IFB or resulting contract shall be in the Circuit Court of Cole County, Missouri.

3. OPEN COMPETITION/INVITATION FOR BID DOCUMENT

- a. It shall be the bidder's responsibility to ask questions, request changes or clarification, or otherwise advise the DPMM if any language, specifications or requirements of an IFB appear to be ambiguous, contradictory, and/or arbitrary, or appear to inadvertently restrict or limit the requirements stated in the IFB to a single source. Any and all communication from bidders regarding specifications, requirements, competitive bid process, etc., must be directed to the buyer from the DPMM, unless the IFB specifically refers the bidder to another contact. Such communication should be received at least ten calendar days prior to the official bid opening date.
- b. Every attempt shall be made to ensure that the bidder receives an adequate and prompt response. However, in order to maintain a fair and equitable bid process, all bidders will be advised, via the issuance of an amendment to the IFB, of any relevant or pertinent information related to the procurement. Therefore, bidders are advised that unless specified elsewhere in the IFB, any questions received less than ten calendar days prior to the IFB opening date may not be answered.
- c. Bidders are cautioned that the only official position of the State of Missouri is that which is issued by the DPMM in the IFB or an amendment thereto. No other means of communication, whether oral or written, shall be construed as a formal or official response or statement.
- d. The DPMM monitors all procurement activities to detect any possibility of deliberate restraint of competition, collusion among bidders, price-fixing by bidders, or any other anticompetitive conduct by bidders which appears to violate state and federal antitrust laws. Any suspected violation shall be referred to the Missouri Attorney General's Office for appropriate action.
- e. The IFB is available for viewing and downloading on the state's On-Line Bidding website. Registered vendors are electronically notified or mailed the IFB based on the information maintained in the State of Missouri's vendor database. If any portion of the address is incorrect, the bidder must notify the buyer in writing or update the address themselves on the state's On-Line Bidding website.
- f. The DPMM reserves the right to officially amend or cancel an IFB after issuance.

4. PREPARATION OF BIDS

- a. Bidders **must** examine the entire IFB carefully. Failure to do so shall be at bidder's risk.

- b. Unless otherwise specifically stated in the IFB, all specifications and requirements constitute minimum requirements. All bids must meet or exceed the stated specifications and requirements.
- c. Unless otherwise specifically stated in the IFB, any manufacturer names, trade names, brand names, information and/or catalog numbers listed in a specification and/or requirement are for informational purposes only and are not intended to limit competition. The bidder may offer any brand which meets or exceeds the specification for any item, but must state the manufacturer's name and model number for any such brands in the bid. In addition, the bidder shall explain, in detail, (1) the reasons why the proposed equivalent meets or exceeds the specifications and/or requirements and (2) why the proposed equivalent should not be considered an exception thereto. Bids which do not comply with the requirements and specifications are subject to rejection without clarification.
- d. Bids lacking any indication of intent to bid an alternate brand or to take an exception shall be received and considered in complete compliance with the specifications and requirements as listed in the IFB.
- e. In the event that the bidder is an agency of state government or other such political subdivision which is prohibited by law or court decision from complying with certain provisions of an IFB, such a bidder may submit a bid which contains a list of statutory limitations and identification of those prohibitive clauses which will be modified via a clarification conference between the DPMM and the bidder, if such bidder is selected for contract award. The clarification conference will be conducted in order to agree to language that reflects the intent and compliance of such law and/or court order and the IFB. Any such bidder needs to include in the bid, a complete list of statutory references and citations for each provision of the IFB which is affected by this paragraph.
- f. All equipment and supplies offered in a bid must be new, of current production, and available for marketing by the manufacturer unless the IFB clearly specifies that used, reconditioned, or remanufactured equipment and supplies may be offered.
- g. Prices shall include all packing, handling and shipping charges FOB destination, freight prepaid and allowed unless otherwise specified in the IFB.
- h. Prices bid shall remain valid for 90 days from bid opening unless otherwise indicated. If the bid is accepted, prices shall be firm for the specified contract period.
- i. Any foreign bidder not having an Employer Identification Number assigned by the United States Internal Revenue Service (IRS) must submit a completed IRS Form W-8 prior to or with the submission of their bid in order to be considered for award.

5. SUBMISSION OF BIDS

- a. Bids may be submitted electronically as permitted by the IFB through the State of Missouri's On-Line Bidding website or hard copy delivered to the DPMM office. Delivered bids must be sealed in an envelope or container, and received in the DPMM office located at 301 West High St, Rm 630 in Jefferson City, MO no later than the exact opening time and date specified in the IFB. All bids must (1) be submitted by a duly authorized representative of the bidder's organization, (2) contain all information required by the IFB, and (3) be priced as required. Hard copy bids may be mailed to the DPMM post office box address. However, it shall be the responsibility of the bidder to ensure their bid is in the DPMM office (address listed above) no later than the exact opening time and date specified in the IFB.
- b. The sealed envelope or container containing a bid should be clearly marked on the outside with (1) the official IFB number and (2) the official opening date and time. Different bids should not be placed in the same envelope, although copies of the same bid may be placed in the same envelope.
- c. A bid submitted electronically may be modified on-line prior to the official opening date and time. A bid which has been delivered to the DPMM office, may be modified by signed, written notice which has been received by the DPMM prior to the official opening date and time specified. A bid may also be modified in person by the bidder or its authorized representative, provided proper identification is presented before the official opening date and time. Telephone or telegraphic requests to modify a bid shall not be honored.
- d. A bid submitted electronically may be canceled on-line prior to the official opening date and time. A bid which has been delivered to the DPMM office, may only be withdrawn by a signed, written notice or facsimile which has been received by the DPMM prior to the official opening date and time specified. A bid may also be withdrawn in person by the bidder or its authorized representative, provided proper identification is presented before the official opening date and time. Telephone or telegraphic requests to withdraw a bid shall not be honored.
- e. When submitting a bid electronically, the bidder indicates acceptance of all IFB terms and conditions by clicking on the "Submit" button on the Electronic Bid Response Entry form. Bidders delivering a hard copy bid to DPMM must sign and return the IFB cover page or, if applicable, the cover page of the last amendment thereto in order to constitute acceptance by the bidder of all IFB terms and conditions. Failure to do so may result in rejection of the bid unless the bidder's full compliance with those documents is indicated elsewhere within the bidder's response.

6. BID OPENING

- a. Bid openings are public on the opening date and at the opening time specified on the IFB document. Prices shall be posted on the state's On-Line Bidding website after the official opening date and time. The DPMM will not provide prices or other bid information via the telephone.
- b. Bids which are not received in the DPMM office prior to the official opening date and time shall be considered late, regardless of the degree of lateness, and normally will not be opened. Late bids may only be opened under extraordinary circumstances in accordance with 1 CSR 40-1.050.

7. PREFERENCES

- a. In the evaluation of bids, preferences shall be applied in accordance with Chapter 34 RSMo. Contractors should apply the same preferences in selecting subcontractors.
- b. By virtue of statutory authority, a preference will be given to materials, products, supplies, provisions and all other articles produced, manufactured, made or grown within the State of Missouri and to all firms, corporations or individuals doing business as Missouri firms, corporations or individuals. Such preference shall be given when quality is equal or better and delivered price is the same or less.
- c. In accordance with Executive Order 98-21, contractors are encouraged to utilize certified minority and women-owned businesses in selecting subcontractors.

8. EVALUATION/AWARD

- a. Any clerical error, apparent on its face, may be corrected by the buyer before contract award. Upon discovering an apparent clerical error, the buyer shall contact the bidder and request clarification of the intended bid. The correction shall be incorporated in the notice of award. Examples of apparent clerical errors are: 1) misplacement of a decimal point; and 2) obvious mistake in designation of unit.
- b. Any pricing information submitted by a bidder shall be subject to evaluation if deemed by the DPMM to be in the best interest of the State of Missouri.
- c. The bidder is encouraged to propose price discounts for prompt payment or propose other price discounts that would benefit the State of Missouri. However, unless otherwise specified in the IFB, pricing shall be evaluated at the maximum potential financial liability to the State of Missouri.
- d. Awards shall be made to the bidder whose bid (1) complies with all mandatory specifications and requirements of the IFB and (2) is the lowest and best bid, considering price, responsibility of the bidder, and all other evaluation criteria specified in the IFB and (3) complies with Sections 34.010 and 34.070 RSMo and Executive Order 04-09.

- e. In the event all bidders fail to meet the same mandatory requirement in an IFB, DPMM reserves the right, at its sole discretion, to waive that requirement for all bidders and to proceed with the evaluation. In addition, the DPMM reserves the right to waive any minor irregularity or technicality found in any individual bid.
- f. The DPMM reserves the right to reject any and all bids. When all bids are non-responsive or otherwise unacceptable and circumstances do not permit a rebid, DPMM may negotiate for the required supplies.
- g. When evaluating a bid, the State of Missouri reserves the right to consider relevant information and fact, whether gained from a bid, from a bidder, from bidder's references, or from any other source.
- h. Any information submitted with the bid, regardless of the format or placement of such information, may be considered in making decisions related to the responsiveness and merit of a bid and the award of a contract.
- i. Any award of a contract shall be made by notification from the DPMM to the successful bidder. The DPMM reserves the right to make awards by item, group of items, or an all or none basis. The grouping of items awarded shall be determined by DPMM based upon factors such as item similarity, location, administrative efficiency, or other considerations in the best interest of the State of Missouri.
- j. All bids and associated documentation which were submitted on or before the official opening date and time will be considered open records pursuant to Section 610.021 RSMo following the official opening of bids.
- k. The DPMM posts all bid results on the On-line Bidding website for a reasonable period after bid award and maintains images of all bid file material for review. Bidders who include an email address with their bid will be notified of the award results via email.
- l. The DPMM reserves the right to request clarification of any portion of the bidder's response in order to verify the intent of the bidder. The bidder is cautioned, however, that its response may be subject to acceptance or rejection without further clarification.
- m. Any bid award protest must be received within ten (10) calendar days after the date of award in accordance with the requirements of 1 CSR 40-1.050 (10).
- n. The final determination of contract award(s) shall be made by DPMM.

9. CONTRACT/PURCHASE ORDER

- a. By submitting a bid, the bidder agrees to furnish any and all equipment, supplies and/or services specified in the IFB, at the prices quoted, pursuant to all requirements and specifications contained therein.
- b. A binding contract shall consist of: (1) the IFB and any amendments thereto, (2) the contractor's response (bid) to the IFB, (3) clarification of the bid, if any, and (4) DPMM's acceptance of the response (bid) by "notice of award" or by "purchase order."
- c. A notice of award does not constitute an authorization for shipment of equipment or supplies or a directive to proceed with services. Before providing equipment, supplies and/or services, the contractor must receive a properly authorized purchase order.
- d. The contract expresses the complete agreement of the parties and performance shall be governed solely by the specifications and requirements contained therein. Any change, whether by modification and/or supplementation, must be accomplished by a formal contract amendment signed and approved by and between the duly authorized representative of the contractor and the DPMM or by a modified purchase order prior to the effective date of such modification. The contractor expressly and explicitly understands and agrees that no other method and/or no other document, including correspondence, acts, and oral communications by or from any person, shall be used or construed as an amendment or modification.

10. INVOICING AND PAYMENT

- a. The State of Missouri does not pay state or federal taxes unless otherwise required under law or regulation.
- b. The statewide financial management system has been designed to capture certain receipt and payment information. Therefore, each invoice submitted must reference the purchase order number and must be itemized in accordance with items listed on the purchase order. Failure to comply with this requirement may delay processing of invoices for payment.
- c. The contractor shall not transfer any interest in the contract, whether by assignment or otherwise, without the prior written consent of the DPMM.
- d. Payment for all equipment, supplies, and/or services required herein shall be made in arrears unless otherwise indicated in the IFB.
- e. The State of Missouri assumes no obligation for equipment, supplies, and/or services shipped or provided in excess of the quantity ordered. Any unauthorized quantity is subject to the state's rejection and shall be returned at the contractor's expense.
- f. All invoices for equipment, supplies, and/or services purchased by the State of Missouri shall be subject to late payment charges as provided in Section 34.055 RSMo.

11. DELIVERY

Time is of the essence. Deliveries of equipment, supplies, and/or services must be made no later than the time stated in the contract or within a reasonable period of time, if a specific time is not stated.

12. INSPECTION AND ACCEPTANCE

- a. No equipment, supplies, and/or services received by an agency of the state pursuant to a contract shall be deemed accepted until the agency has had reasonable opportunity to inspect said equipment, supplies, and/or services.
- b. All equipment, supplies, and/or services which do not comply with the specifications and/or requirements or which are otherwise unacceptable or defective may be rejected. In addition, all equipment, supplies, and/or services which are discovered to be defective or which do not conform to any warranty of the contractor upon inspection (or at any later time if the defects contained were not reasonably ascertainable upon the initial inspection) may be rejected.
- c. The State of Missouri reserves the right to return any such rejected shipment at the contractor's expense for full credit or replacement and to specify a reasonable date by which replacements must be received.
- d. The State of Missouri's right to reject any unacceptable equipment, supplies, and/or services shall not exclude any other legal, equitable or contractual remedies the state may have.

13. WARRANTY

- a. The contractor expressly warrants that all equipment, supplies, and/or services provided shall: (1) conform to each and every specification, drawing, sample or other description which was furnished to or adopted by the DPMM, (2) be fit and sufficient for the purpose expressed in the IFB, (3) be merchantable, (4) be of good materials and workmanship, and (5) be free from defect.
- b. Such warranty shall survive delivery and shall not be deemed waived either by reason of the state's acceptance of or payment for said equipment, supplies, and/or services.

14. CONFLICT OF INTEREST

- a. Officials and employees of the state agency, its governing body, or any other public officials of the State of Missouri must comply with Sections 105.452 and 105.454 RSMo regarding conflict of interest.
- b. The contractor hereby covenants that at the time of the submission of the bid the contractor has no other contractual relationships which would create any actual or perceived conflict of interest. The contractor further agrees that during the term of the contract neither the contractor nor any of its employees shall acquire any other contractual relationships which create such a conflict.

15. REMEDIES AND RIGHTS

- a. No provision in the contract shall be construed, expressly or implied, as a waiver by the State of Missouri of any existing or future right and/or remedy available by law in the event of any claim by the State of Missouri of the contractor's default or breach of contract.
- b. The contractor agrees and understands that the contract shall constitute an assignment by the contractor to the State of Missouri of all rights, title and interest in and to all causes of action that the contractor may have under the antitrust laws of the United States or the State of Missouri for which causes of action have accrued or will accrue as the result of or in relation to the particular equipment, supplies, and/or services purchased or procured by the contractor in the fulfillment of the contract with the State of Missouri.

16. CANCELLATION OF CONTRACT

- a. In the event of material breach of the contractual obligations by the contractor, the DPMM may cancel the contract. At its sole discretion, the DPMM may give the contractor an opportunity to cure the breach or to explain how the breach will be cured. The actual cure must be completed within no more than 10 working days from notification, or at a minimum the contractor must provide DPMM within 10 working days from notification a written plan detailing how the contractor intends to cure the breach.
- b. If the contractor fails to cure the breach or if circumstances demand immediate action, the DPMM will issue a notice of cancellation terminating the contract immediately.
- c. If the DPMM cancels the contract for breach, the DPMM reserves the right to obtain the equipment, supplies, and/or services to be provided pursuant to the contract from other sources and upon such terms and in such manner as the DPMM deems appropriate and charge the contractor for any additional costs incurred thereby.
- d. The contractor understands and agrees that funds required to fund the contract must be appropriated by the General Assembly of the State of Missouri for each fiscal year included within the contract period. The contract shall not be binding upon the state for any period in which funds have not been appropriated, and the state shall not be liable for any costs associated with termination caused by lack of appropriations.

17. COMMUNICATIONS AND NOTICES

Any notice to the contractor shall be deemed sufficient when deposited in the United States mail postage prepaid, transmitted by facsimile, transmitted by e-mail or hand-carried and presented to an authorized employee of the contractor.

18. BANKRUPTCY OR INSOLVENCY

- a. Upon filing for any bankruptcy or insolvency proceeding by or against the contractor, whether voluntary or involuntary, or upon the appointment of a receiver, trustee, or assignee for the benefit of creditors, the contractor must notify the DPMM immediately.
- b. Upon learning of any such actions, the DPMM reserves the right, at its sole discretion, to either cancel the contract or affirm the contract and hold the contractor responsible for damages.

19. INVENTIONS, PATENTS AND COPYRIGHTS

The contractor shall defend, protect, and hold harmless the State of Missouri, its officers, agents, and employees against all suits of law or in equity resulting from patent and copyright infringement concerning the contractor's performance or products produced under the terms of the contract.

20. NON-DISCRIMINATION AND AFFIRMATIVE ACTION

In connection with the furnishing of equipment, supplies, and/or services under the contract, the contractor and all subcontractors shall agree not to discriminate against recipients of services or employees or applicants for employment on the basis of race, color, religion, national origin, sex, age, disability, or veteran status. If the contractor or subcontractor employs at least 50 persons, they shall have and maintain an affirmative action program which shall include:

- a. A written policy statement committing the organization to affirmative action and assigning management responsibilities and procedures for evaluation and dissemination;
- b. The identification of a person designated to handle affirmative action;
- c. The establishment of non-discriminatory selection standards, objective measures to analyze recruitment, an upward mobility system, a wage and salary structure, and standards applicable to layoff, recall, discharge, demotion, and discipline;
- d. The exclusion of discrimination from all collective bargaining agreements; and
- e. Performance of an internal audit of the reporting system to monitor execution and to provide for future planning.

If discrimination by a contractor is found to exist, the DPMM shall take appropriate enforcement action which may include, but not necessarily be limited to, cancellation of the contract, suspension, or debarment by the DPMM until corrective action by the contractor is made and ensured, and referral to the Attorney General's Office, whichever enforcement action may be deemed most appropriate.

21. AMERICANS WITH DISABILITIES ACT

In connection with the furnishing of equipment, supplies, and/or services under the contract, the contractor and all subcontractors shall comply with all applicable requirements and provisions of the Americans with Disabilities Act (ADA).

22. FILING AND PAYMENT OF TAXES

The commissioner of administration and other agencies to which the state purchasing law applies shall not contract for goods or services with a vendor if the vendor or an affiliate of the vendor makes sales at retail of tangible personal property or for the purpose of storage, use, or consumption in this state but fails to collect and properly pay the tax as provided in chapter 144, RSMo. For the purposes of this section, "affiliate of the vendor" shall mean any person or entity that is controlled by or is under common control with the vendor, whether through stock ownership or otherwise. Therefore bidder's failure to maintain compliance with chapter 144, RSMo may eliminate their bid from consideration for award.

23. TITLES

Titles of paragraphs used herein are for the purpose of facilitating reference only and shall not be construed to infer a contractual construction of language.

Revised 08/28/04